IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 870 OF 2007

Food Corporatopm of India.... Petitioner

versus

Ganesh Industries,
A proprietory concern ..... Respondent.

Shri V.G.Mujumdar for the petitioner
Shri S.P.Kanuga i/b Smt. Sapna N Nath for Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 9TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner, Food Corporation of India, is the original plaintiff who instituted a suit for recovery of a sum of Rs.50,21,779.50/- against the respondent proprietary concern. It is the case of the petitioner that it had floated a tender for disposal of damaged food grains lying in various depots of the petitioner in Pune District. The respondent Ganesh Industries was carrying on business of manufacture of cattle and poultry feed. The respondent Ganesh Industries participated in the tender process for purchase of damaged food grains. The tender of the respondent was accepted by the petitioner, but as the respondent

failed to make payment of the amount due, as per the tender within the time prescribed, the petitioner had to dispose of the stock in question at respondent's risk and costs. The petitioner approached the trial court by contending that the respondent has committed breach of the terms and conditions of the tender and hence claimed damages.

3. In the plaint, the respondent was described as Ganesh Industries, a proprietary concern, through its sole proprietor Shri T.R.Agarwal. Shri T.R.Agarwal filed written statement before the trial court and denied that he had ever participated in the tender process and also denied his liability. It is the case of the petitioner that very many proprietary concerns of the family members of Agrawal family are registered with the petitioner, The petitioner moved an application for amendment of the plaint with a view to delete the name of the sole proprietor Shri T.R.Agarwal and for substituting the name of his son Shri Vijeshkumar Tilakram Agarwal. In the applicaiton for amendment the petitioner has submitted that on account of genuine and bonafide mistake, the name of the sole proprietor was wrongly mentioned. The petitioner has tried to explain in the amendment application, the reasons as to why the petitioner has committed a bonafide mistake. It is also submitted

that the defendant has also tried to mislead the petitioner by suppressing the name of the sole proprietor of the respondent. The trial court has rejected the amendment application and aggrieved thereby this writ petition has been filed.

4. The learned counsel for the petitioner has submitted that the petitioner is a Government company established by and under the Food Corporation Act 1964 which has sued the respondent in the name of a wrong proprietor. In the submission of the learned counsel if the amendment is not allowed the same will put the petitioner to suffer a loss more than Rs.50 lacs. It is then submitted that Shri T.R.Agarwal who has been wrongly sued as proprietor of Ganesh Industries could be adequately compensated.

5. Perusal of the record clearly shows that the impleadment of T.R.Agarwal as a sole proprietor of Ganesh Industries was a bonafide mistake. As the petitioner has now discovered that, the proprietor of Ganesh Industries is not Shri T.R.Agarwal, but his son, the amendment can be allowed, which would be in furtherence of cause of justice. The trial court has rejected the application by holding that the suit against Shri V.T. Agarwal would be barred by limitation. The merit of the proposed amendment

cannot be considered by the court while deciding the amendment application. After the amendment application is allowed, and Shri V.T.Agarwal is brought on record as the sole proprietor of the respondent Ganesh Industries, the question of limitation can be gone into. The issue as to whether the suit would be barred against Shri V.T.Agarwal, cannot be prejudged while considering the application seeking amendment of the plaint. The learned counsel for the respondent has rightly submitted that because of negligence on the part of the petitioner, Shri T.R.Agarwal has been unnecessarily made to contest the matter at Pune and had to incure unnecessary expenses for the same. I have no iota of doubt that Shri T.R.Agarwal need to be compensated. I am of the view that allowing the amendment application, would advance cause of justice hence I proceed to allow the amendment application.

6. In the result, the impugned order passed by the trial court is quashed and set aside. The amendment application filed by the petiitoner/plaintiff stands allowed subject to payment of costs of Rs. 25,000/- by the petitioner to Shri T.R.Agarwal. It is expressly made clear that the question of limitation is left open to be considered by the court after the amendment is carried out and after Shri V.T.Agarwal

put in his appearance and is heard in the matter.

Rule made absolute in the above terms.

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